IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.35/2000

Ram Swaroop Sharma

Versus

State & Anr.

DATE OF ORDER :: 30/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr.Rinesh Gupta for Mr.A.K.Gupta, for petitioner
Mr. Arun Sharma, P.P.

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Instant petition is directed against the order dated 21st December, 1999 whereby the application filed by respondent No.2 u/s.457 Cr.P.C. was accepted with the condition that vehicle in question during pendency of the case be handed over to him on furnishing security of Rs.3 lacs and other conditions to safeguard the interest of parties were also incorporated therein.

Complainant-petitioner lodged a report on 25th May, 1999 at Police Station Mansarovar for the offence u/s.420 IPC against accused-non-petitioner in which it was alleged that he had purchased the half share of Kajod Mal in regard to vehicle in question No.RJ 21-1C-0283 along with trolley and payment of Rs.81,000/- was made to him on 10th August, 1998 and Kajod Mal in his statement also accepted about payment being

received as alleged from the complainant-petitioner, but still the accused-non-petitioner got the vehicle registered in his name. Since vehicle was seized, both the complainant-petitioner and so also the accused-non-petitioner filed their respective application for possession of vehicle in question. Learned trial Judge after considering the rival claims of respective parties, considered appropriate to hand over the possession of vehicle to the registered owner who was accused-non-petitioner under order impugned dated 21st December, 1999.

Counsel for petitioner submits that the accused-non-petitioner got the vehicle registered in his name by creating a false document and immediately when he got it registered in his name, complaint was filed by him. Under these circumstances, merely because he was registered owner of the vehicle, learned trial Judge has committed serious error of law in handing over possession to him and in support of his submission, counsel placed reliance on the judgment of this court in **Hari Mohan Agrawal Vs. State of Raj. [1996 (22) (Supp.) R.Cr.C.-626**.

Learned Public Prosecutor and so also counsel for accused-non-petitioner supported the order and submit that sufficient safeguards have been incorporated in the order impugned and when the accused-non-petitioner is registered owner of the

vehicle, no error has been committed by learned trial Judge in handing over possession of vehicle to him.

I have heard counsel for parties and perused the order impugned.

This fact cannot be ruled out that ordinarily vehicle has to be handed over to the registered owner of the vehicle during pendency of investigation, but other facts are also required to be looked into. This court in the judgment referred to supra while recording finding that the registered owner of the vehicle cannot be considered to be a sole basis for handing over possession, has considered that possession was handed over of the vehicle in question on hire, as such a person who was not the registered owner, but was having lawful possession, which fact was completely ignored by learned trial Judge while handing over possession but in the facts of instant case the vehicle was registered in the name of accused-non-petitioner much before the complaint was filed on 21st May, 1999 and whether the complainant-petitioner had purchased the share of Kajod Mal who was also registered owner of the vehicle in question and consideration has been passed over to him are the question which was required to be examined during investigation, as such this court does not find any error committed by learned trial Judge in

exercise of his judicial discretion which call for any interference. Even otherwise, it was an interim arrangement made by learned trial Judge and all necessary safeguards including taking security of the said amount of Rs.3 lacs from accused-non-petitioner have been incorporated which certainly has safeguarded the interest of respective parties and it will not be going to cause prejudice to either of parties to the dispute.

Consequently, the misc. petition fails and is hereby dismissed, along with Stay Petition No.27/2000.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.